

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENT W. PORTER Sr.,

Plaintiff,

v.

ASSISTANT ATTORNEY GENERAL
MARY C. WARD,

Defendant.

Case No. C05-5230FDB

ORDER ADOPTING
REPORT AND
RECOMMENDATION

Plaintiff, a Native American incarcerated at the Airway Heights Correction Center challenges Defendant's actions in representing the State of Washington Department of Social and Health Services in the dependency proceedings relating to Plaintiff's child. The dependency proceedings have been continued because Plaintiff's daughter, who is the subject of those proceedings has run away. The trial was set for June 13, 2005, but it was noted that the daughter will turn eighteen prior to the scheduled trial date, and the dependency petition will be dismissed when she turns eighteen.

The Magistrate Judge concluded that the Defendant Assistant Attorney General was entitled to absolute immunity in her role of appearing in State court representing the Washington State Department of Social and Health Services in a child custody petition.

Plaintiff Porter objects to the Magistrate Judge's recommendation arguing that the position is erroneous in view of the Indian Child Welfare Act and the United States Constitution. Plaintiff's objections do not persuade the Court that the Magistrate Judge erred in concluding that Defendant

1 Assistant Attorney General Ward enjoys absolute immunity in her role of representing the State
2 Department of Social and Health Services in the dependency proceedings.

3 Defense Counsel filed a notice that he would be unavailable on July 1, 2005 and from August
4 12, through August 21, 2005. Plaintiff filed a "Motion That Defendant Show Cause for
5 Unavailability" asserting that "justice delayed is justice denied actually increasing and infringing
6 violation of Civil/Constitutional rights." This motion is rendered moot by the Court's adoption of
7 the Report and Recommendation and dismissal of this case, and this motion will be stricken from the
8 Court's calendar.

9 The Court, having reviewed, the Report and Recommendation of Magistrate Judge J. Kelley
10 Arnold, objections to the report and recommendation, and the remaining record, does hereby find
11 and ORDER:

- 12 (1) The Court adopts the Report and Recommendation;
- 13 (2) The action is **DISMISSED WITH PREJUDICE**. An Assistant Attorney General
14 Representing a state department in state court proceedings regarding child
dependency is entitled to absolute immunity from damages.
- 15 (3) Plaintiff's Motion That Defendant Show Cause for Unavailability [Dkt. # 20] is
16 STRICKEN from the Court's calendar is MOOT.
- 17 (4) The Clerk is directed to send copies of this Order to plaintiff, counsel for defendant,
and to the Hon. J. Kelley Arnold.

18 DATED this 29th day of July 2005.

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21 FRANKLIN D. BURGESS
22 UNITED STATES DISTRICT JUDGE
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